

*sample*

*Consultant or Management Services Contract*

**AGREEMENT**

**BY AND BETWEEN**

**TOWN/CITY OF \_\_\_\_\_**

**AND**

\_\_\_\_\_

THIS AGREEMENT, was made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Town of \_\_\_\_\_, Massachusetts (hereinafter referred as the TOWN/CITY) and \_\_\_\_\_ hereinafter referred to as the CONSULTANT).

WITNESSETH THAT:

WHEREAS, the TOWN of \_\_\_\_\_ has entered into an agreement with the Commonwealth of Massachusetts' Department of Housing and Community Development (hereinafter "DHCD"), Massachusetts Community Development Block Grant Program (hereinafter "Mass. CDBG") to undertake a community development program of \_\_\_\_\_ (hereinafter "Program") pursuant to the Housing and Community Development Act of 1974 (hereinafter "Act"), as amended, and regulations thereunder, and

WHEREAS, professional services relating to the implementation and administration of the Program are sought to assist the TOWN in the timely achievement of its Mass. CDBG \_\_\_\_\_ Grant Program objectives.

NOW, THEREFORE, THE PARTIES HERETO DO AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT:** The TOWN hereby engages the CONSULTANT to perform the services set forth herein and the CONSULTANT hereby accepts the engagement.

2. **SCOPE OF SERVICES:** The CONSULTANT shall perform the necessary services as described in the approved proposal to the TOWN/CITY of \_\_\_\_\_, which is incorporated by reference herein as Attachment A.

3. **RESPONSIBILITY OF THE TOWN:** The TOWN/CITY shall assume responsibility for assisting the CONSULTANT insofar as possible for the purpose of efficiency and furnishing the CONSULTANT with information needed to satisfactorily complete the services.

3.1 The TOWN/CITY shall designate a project representative authorized to act on its behalf with respect to the project. The TOWN/CITY 'S representative is \_\_\_\_\_.  
TELEPHONE \_\_\_\_\_.

4.1 REPORTING: The CONSULTANT will submit written reports to the TOWN/CITY on the status of the professional services, according to the schedule and dates specified below, or at other times as required by an information request or reporting requirement of Mass. CDBG. *(The following tasks are a sample, insert appropriate ones.)*

REPORT: Draft Report of Findings and Recommendations on \_\_\_\_\_  
DATE DUE: 10 business days after \_\_\_\_\_

REPORT: Consolidated Draft Report on Findings and Recommendations of \_\_\_\_\_  
*(delete this item if firm not responsible for report)*  
DATE DUE: 15 business days after \_\_\_\_\_

REPORT: Response to Draft Report  
DATE DUE: 20 business days after end of \_\_\_\_\_

REPORT: Findings and Recommendations of \_\_\_\_\_  
*(delete this item if firm not responsible for this report)*  
Date Due: 25 business days after end of \_\_\_\_\_

5. SUBCONTRACTS: No subcontracts may be awarded by the CONSULTANT the purpose of which is to fulfill in whole or in part the services required of the CONSULTANT, without prior written approval of the TOWN and the Department of Housing and Community Development.

6. TIME OF PERFORMANCE: The services of the CONSULTANT are to commence on or about \_\_\_\_\_, \_\_\_\_\_ and shall be undertaken and completed in sequence as to assure their expeditious completion.

6.1 All services required hereunder shall be completed by \_\_\_\_\_.

7. COMPENSATION: The TOWN/CITY will pay the CONSULTANT a total fee in amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_), with no reimbursements for out-of-pocket expenses, based on invoices submitted in the approved form and according to the "Method and Schedule of Compensation," found as Attachment B.

8. GENERAL PROVISIONS:

8.1 RETENTION OF RECORDS: The CONSULTANT shall maintain in accordance with 2 CFR Part 200.333, and any Mass. CDBG regulations, procedures or guidelines, those books, records, and other documents, including but not limited to payroll records, and purchase orders that are sufficient to document that activities carried out were in accordance with this Agreement, and the primary objectives of the Act, and any other applicable laws and regulations. Such records shall contain all information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. The CONSULTANT shall maintain such records for a period of seven (7) years from the date of expiration of this Agreement, or if such records become the subject of audit findings, they shall be retained until such findings have been resolved, whichever is later.

8.2 ACCESS TO RECORDS: The CONSULTANT shall make all books, accounts, records, reports, files, and other papers, things or property, that relate to its activities under this Agreement, available at all reasonable times for inspection, review, and audit by the Mass. CDBG, their authorized representatives, authorized representatives of HUD, the Inspector General of the United States, or of the Commonwealth, the Auditor of the Commonwealth, and the Attorney General of the United States, or of the Commonwealth reserves the right

of the Governor or his designee, the Secretary of Administration and Finance, and the State Auditor and his designee, at reasonable times and upon reasonable notice, to examine the books, records, and other compilative data of the CONSULTANT which pertain to the performance of the provisions and requirements of this Agreement, as provided by Executive Order 195.

8.3. TERMINATION: The TOWN/CITY may terminate the contract, for cause, upon 15 days written notice to the CONSULTANT. In case of termination, all finished and unfinished documents shall become the property of the TOWN/CITY.

8.3.1 In the event of termination, the CONSULTANT will be compensated for services provided to the date of termination, according to the "Method and Schedule of Compensation," Attachment B.

8.4 AMENDMENTS: This Agreement may be amended provided such amendment is in writing by the signatories hereto, and receives approval from Mass. CDBG prior to its effective date.

8.5 NON-DISCRIMINATION: The CONSULTANT shall adhere to the requirements set forth in Title VI of the Civil Rights Act of 1964 (Public Law 88-352), and the regulations issued pursuant thereto by HUD; Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), as amended; section 109 of the Housing and Community Development Act of 1974, and the HUD regulations issued pursuant thereto (24 CFR 570.601); Federal Executive Order 11063, as amended by Executive Order 12259 and the HUD regulations issued pursuant thereto (24 CFR 107); The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Section 402 of the Veterans of the Vietnam Era Act (for projects of \$10,000 or more); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Massachusetts General Laws Chapter 151B Section 1 et seq.; State Executive Order 74, as amended and revised by Executive Orders 116, 113 and 227; and Mass. CDBG regulations, procedures or guidelines.

The CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry or status as a veteran. . The CONSULTANT shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry or status as a veteran. . Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The CONSULTANT shall state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry or status as a veteran.

8.6 PROCUREMENT STANDARDS: The CONSULTANT shall adhere to the requirements set forth in 2 CFR Part 200.317 through 200.326 and Mass. CDBG regulations, procedures and guidelines with respect to standards governing procurement, and any applicable provisions of State laws and regulations relative thereto, including Chapter 30, section 39M; Chapter 149, section 44A through 44J; Chapter 484 of the Acts of 1984; and Chapter 30B. All procurement transactions without regard to dollar value shall be conducted in a manner that provides maximum free and open competition. It is national and state policy that the recipient take affirmative steps to award a fair share of contracts taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. The SUBRECIPIENT shall maintain records sufficient to detail the process for procurement.

8.7 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal

opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

8.8 EMPLOYMENT OPPORTUNITIES: Where applicable, the CONSULTANT shall comply with provisions of Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) and the HUD regulations issued pursuant thereto (24 U.S.C. 135), which shall serve as guidance for the implementation of said section.

8.8 FAIR HOUSING: In addition to the laws and regulations set forth herein with respect to ensuring fair housing opportunities, the CONSULTANT shall adhere to the provisions of State Executive Orders 215 and 227.

8.9 LABOR STANDARDS: Where applicable, the CONSULTANT shall adhere to the provisions of Section 110 of the Act, and the Massachusetts General Laws Chapter 149 sections 26 to 27D inclusive (as amended by Chapter 484 of the Acts of 1984). In the case of the rehabilitation of commercial property, or rehabilitation of residential property designed for residential use of eight or more families, the CONSULTANT shall adhere to the Federal Labor Standards Provisions (HUD Handbook 1344.1), the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et. seq.) and the Copeland Anti-Kickback Act.

8.10 CONFLICT OF INTEREST: The CONSULTANT shall adhere to the mandates of the Massachusetts Conflict of Interest Statute, M.G.L. c.268A, the federal Conflict of Interest Provisions at 24 CFR 570.489 and the federal Hatch Act, 5 U.S.C. ss 1501 et seq.

8.11 COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS, AND Mass. CDBG REGULATIONS, PROCEDURES, AND GUIDELINES: All activities authorized by this agreement shall be subject to and performed in accordance with the provisions of the TOWN/CITY's Grant Agreement with Mass. CDBG and all its attachments (including, where relevant, Section 4.14, Flood Disaster Protection, 4.15, Historic Preservation, 4.16, Additional Environmental Requirements, 4.17, Lead Paint Hazards, and 4.18 Relocation Assistance), all applicable federal, state, and local laws and regulations, including but not limited to any applicable regulations issued by HUD published in 24 CFR Part 570, as may be amended from time to time. The Contractor shall comply with the provisions of 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," and all applicable State and local laws and regulations, including but not limited to those specifically stated herein, any additional regulations, procedures or guidelines as may be established or amended by DHCD.

9. AVAILABILITY OF FUNDS: The compensation provided by this agreement is subject to the continued availability of federal funds for the CDBG Program, and to the continued eligibility of the Commonwealth and the TOWN/CITY to receive such funds.

10. INDEMNIFICATION: The CONSULTANT shall indemnify, defend, and hold the TOWN/CITY harmless from and against any and all claims, demand, liabilities, actions, causes of actions, cost and expenses caused by or arising out of the CONSULTANT's breach of this agreement or the negligence or misconduct of the CONSULTANT, or the agents or employees.

11. LICENSES: The CONSULTANT shall procure and keep current any licenses, certifications, or permits required for any activity to undertaken as part of the Scope of Services, Attachment A, as required by federal, state or local laws or regulations, and shall comply with the provisions of 2 CFR Part 200.325 with respect to any bonding or other insurance requirements.

12. **CONFIDENTIALITY:** The CONSULTANT will protect the privacy of, and respect the confidentiality of information provided by, program participants, consistent with applicable federal and state regulations, including M.G.L., C. 66 section 10, regarding access to public records, M.G.L. c.93H, Security Breaches; Executive Order No. 504, Regarding the Security and Confidentiality of Personal Information, and any applicable regulations, including without limitation, 801 CMR 3.00: Privacy and Confidentiality and 201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth.

13. **COPYRIGHT:** No material prepared in whole or in part under this agreement shall be subject to copyright in the United States of America or in any other country except with the prior written approval of Mass. CDBG.

14. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

15. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—**Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

16. **Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).(I)**

17. **Debarment and Suspension (Executive Orders 12549 and 12689)—**A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

18. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—**Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

19. **CLOSEOUT:** The CONSULTANT shall follow such policies and procedures with respect to close-out of any associated grant as may be required by Mass. CDBG.

20. **The following Certificate of Tax Compliance must be completed and submitted as part of this contract**

**Certificate of Tax Compliance**

pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, I certify under the penalties of perjury that to the best of his/her knowledge and belief I am in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Contractor: By: \_\_\_\_\_ (signature of authorized representative & title) \_\_\_\_\_ (date)

21. SEVERABILITY: If any provision of this agreement is held invalid, the remainder of the agreement shall not be affected thereby, and all other parts of this agreement shall nevertheless be in full force and effect.

IN WITNESS THEREOF, the TOWN and the CONSULTANT have executed this AGREEMENT under seal in triplicate as of the date above written.

**Approvals and Signatures**

By: TOWN OF:	By: CONSULTANT
Authorized Signatory _____ Date _____	name _____ Date _____
<u>Certification as to Availability of Funds:</u>	<u>Approval of Contract as to Form:</u>
Town Accountant _____ Date _____	Town Counsel _____ Date _____
<u>Approval of Contract as to Appropriate Procurement Method</u>	
Town Procurement Officer _____ Date _____	